IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No. 322 of 2007
IN
CRIMINAL APPLICATION No. 306 of 2007
IN
CRIMINAL APPLICATION No. 81 of 2007
IN
CRIMINAL REVN APPLICATION No.60 of 2006

Ashok C. Mehta ..Applicant.

Vs.

The State of Maharashtra
and Anr. Respondents.

None for the applicant.

Mr S. S. Pednekar, A.P.P. for the State Respondent No.1.

Mr S. V. Vora, Advocate for the Respondent No.2.

CORAM: V. C. DAGA,J.

DATED: 1ST NOVEMBER, 2007.

P.C.:-

1. The aforesaid Revision Application No. 60 of 2006 arises from the prosecution under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act). The parties to the petition and their respective Advocates had filed Minutes of order dated 13.3.2006 duly signed by them with a request to accept the same.

2. The applicant in the Minutes of order, filed before Shri. Kanade,J, had undertaken

to pay the amount mentioned in the Minutes of order within a particular time frame prescribed therein. Undertakings to that effect were recorded by this Court. This Court had made it clear in the said order dated 13.3.2006 that if the amount was not paid, the revision application will stand dismissed and the order passed by the learned Magistrate, confirmed by the learned Sessions Court, shall stand affirmed. Those undertakings given to the Court were not complied with. The petition was under objection. Twice, time to remove office objection was granted but applicant did not remove office objections.

3. On the next date of hearing, i.e. on 21.12.2006, learned counsel for the applicant had made a statement that last cheque in the sum of Rs.3,03,350/- was to be paid and accordingly, the same was sought to be paid by post dated cheque dated 10.1.2007. Learned Single Judge (Shri. S. C. Dharmadhikari,J) recorded the same in the order sheet and the case was adjourned for final order on 15.1.2007.

4. The matter, after aforesaid date, came

to be adjourned from time to time and, ultimately, on 12.3.2007 Shri. Bhatia,J took up matter for hearing. Learned counsel and the applicant both chose to remain absent. With the result, all connected cases including present one stood dismissed for want of compliance of the undertakings given to this Court.

5. Thereafter, it appears that application for restoration was taken out and which came to be dismissed since undertakings given to this Court were not complied with and liability arising therefrom was not discharged. That is how, the order dated 27.6.2006 passed in Criminal Revision Application No. 60 of 2006 remained to be satisfied. With the result, revision petition came to be dismissed on 12.3.2007.

6. It appears that on 10.4.2007 Misc.Cri. Application No.81 of 2007 was considered by this Court and on the undertaking of the applicant that he would pay entire amount of Rs.3,03,350/- within three weeks, application was restored. While seeking order of restoration, on 10.4.2007 applicant agreed to hand over amount of Rs.6,650/- by way of

interest either by cheque or in cash. In other words, learned counsel for the applicant stated that in addition to the original liability applicant was to hand over amount of Rs. 6,650/- by way of interest either in cash or demand draft by 30.4.2007. On this specific undertaking Revision Application was restored by the Court.

7. The substantive revision petition, after its restoration, was taken on board on 10.4.2007. This revision was adjourned to 30.4.2007 to report compliance in terms of settlement.

8. However, on 22.6.2007 since nobody was present on behalf of the applicant in revision petition, it again came to be dismissed for non-compliance of the conditional order. The applicant, thereafter, has again taken out Misc. Application No. 306 of 2007 for restoration of the substantive Revision Application No. 60 of 2006, which was adjourned from time to time, which ultimately, appeared on my board on 10.9.2007 and again came to be dismissed in default since nobody was present on behalf of the applicant.

9. Again restoration application No. 322 of 2007, is taken out by the applicant for restoration of the Revision Petition No. 60 of 2006.

10. That is how, now, the applicant is seeking restoration of the Revision Application No. 60 of 2006 without there being any prayer for restoration of Misc. Application No. 306 of 2007 which was, initially, filed for restoration of substantive Revision Petition No. 60 of 2006, and came to be dismissed for want of prosecution. Thus, in absence of prayer for restoration of Misc. Cri. Application No. 306 of 2007 substantive revision petition cannot be restored.

11. Apart from the above, though the case was adjourned from time to time, nobody is present even today. Previous undertaking has not been complied with. Under these circumstances, the present application is liable to be dismissed for want of compliance of the assurance and undertaking given to this Court.

12. In my considered view, mere dismissal of

application will not serve ends of justice; as such same is dismissed with cost quantified in the sum of Rs. 25,000/- for non-compliance of the undertaking given to this Court.

13. In the event applicant moves for restoration, payment of cost would be condition precedent. The applicant will have to first deposit the cost and then seek restoration, that too, subject to compliance of undertakings given to this Court from time to time.

14. In the event of deposit of costs 50% shall be transferred to the Legal Services Authority of this Court and remaining 50% shall be payable to the complainant/respondent No.2. He would be entitled to withdraw the same.

(V.C. DAGA,J.)